BEFORE IOWA BOARD OF NURSING HOME ADMINISTRATORS

IN THE MATTER OF)	NO. 09-011
Sandra Luft,)	NOTICE OF HEADING
Respondent.)	NOTICE OF HEARING AND STATEMENT OF CHARGES

COMES NOW the Iowa Board of Nursing Home Administrators ("Board") and hereby files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 645 Iowa Administrative Code (IAC) 11.6.

Respondent was issued Iowa nursing home administrator license number 01462 on March 3, 1988. Respondent's license expired on December 31, 2009. Respondent's address as reported to the Board is 1711 Spencer Street, Grinnell, IA 50112.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on **October 13**, **2011** before the Board of Nursing Home Administrators. The hearing shall begin at **9:00 a.m.** and shall be located in the Lucas State Office Building, Fifth Floor Board Conference Room 526, Des Moines, Iowa.

Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges you are required by 645 IAC 11.12 to file an Answer. The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C and D of this Notice of Hearing and Statement of Charges. Pleadings shall be filed with the Board at the following address: Board of Nursing Home Administrators, 5th Floor, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa, 50319.

Presiding Officer. The Board shall serve as presiding officer, but the Board may

request an Administrative Law Judge make initial rulings on pre-hearing matters, and be present to assist and advise the board at hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 641 IAC chapter 11. At hearing, you may appear personally or be represented by legal counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at hearing. If you need to request an alternative time or date for hearing, you must comply with the requirements of 645 IAC 11.18. The hearing may be open to the public or closed to the public at your discretion.

<u>Pre-hearing Conference</u>. Any party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board's rules regarding pre-hearing conferences are contained at 645 IAC 11.17.

<u>Prosecution</u>. The Office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address: September Lau, Assistant Attorney General, Iowa Attorney General's Office, Hoover State Office Building, 2nd Floor, Des Moines, Iowa 50319.

<u>Communications</u>. You may not contact board members in any manner, including by phone, letter, or e-mail, about this Notice of Hearing and Statement of Charges.

Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case.

B. LEGAL AUTHORITY AND JURISDICTION

<u>Jurisdiction</u>. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 155, and 272C.

<u>Legal Authority</u>. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A, 147, 155, and 272C and 645 IAC chapter 144.

<u>Default</u>. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 645 IAC 11.21.

C. SECTIONS OF STATUTES AND RULES INVOLVED Count I

Respondent is charged pursuant to Iowa Code section 147.55(2) and 645 IAC 144.2(3)(c) and (d) with professional incompetence in that Respondent failed to "exercise the degree of care which is ordinarily exercised by a nursing home administrator acting in the same or similar circumstances," and failed to "conform to the minimal standard of acceptable and prevailing practice of a licensed nursing home administrator in this state."

Count II

Respondent is charged pursuant to Iowa Code section 147.55(9) and 645 IAC 144.2(12) with negligence in the practice of the profession, in that Respondent failed "to exercise due care including improper... supervision of employees or other individuals."

D. FACTUAL CIRCUMSTANCES

1. Respondent originally served as nursing home administrator for

Friendship Manor (the Facility) in Grinnell Iowa from February, 1991, through July, 1999, when she was transferred to another facility.

- 2. In April, 2002, Respondent returned to the Facility to serve as nursing home administrator.
- 3. As the administrator, Respondent was responsible for the day-to-day operation of the Facility and for ensuring that the Facility was operated in compliance with all state and federal laws and regulations governing the Facility. She was also responsible for ensuring that the highest degree of quality care practicable was delivered to residents.
- 4. In April, 2008, the Iowa Department of Inspections and Appeals, Health Facilities (DIA), in conjunction with the Department of Public Health, Centers for Medicare & Medicaid Services (CMS) conducted a survey of the Facility. Inspectors noted the following deficiencies:
 - a. In violation of 42 Code of Federal Regulations (CFR) 483.25, the Facility did not provide the necessary care and services to maintain the highest level of functioning and well being of each resident in that the Facility failed to thoroughly assess a resident who wore a support hose, an air cast and brace due to a fractured ankle, leading to unnecessary amputation of the resident's leg.
 - b. In violation of 42 CFR 483.25(a)(3), the Facility did not provide necessary services for dependent residents in that the Facility failed to provide routine baths for numerous residents.
 - c. In violation of 42 CFR 483.25(h), the Facility environment was not free of accident hazards in that the Facility failed to use a functional alarm for a

resident who was a known fall-risk.

- d. 42 CFR 483.40(c)(3)-(4) requires physicians to examine each resident every 30 days for 90 days after admission. The Facility was in violation of this requirement in that one resident was admitted in October, 2007, was seen again in November, 2007, and then not seen by a physician again through April of 2008.
- e. The Facility did not operate and provide services in compliance with all Federal and State laws, regulations, and codes, and with accepted professional standards and principles in that
 - 1) in violation of 481 IAC 50.7 (2/13/2008), the Facility did not notify the Department of Health and Human Services when a non-ambulatory resident sustained a major injury after an unwitnessed fall. The resident was found on the floor, subsequently began seizing, and was then transported to the hospital where an x-ray revealed a right femoral neck fracture. The resident died at the hospital.
 - 2) according to 481 IAC 58.20(18), the health service supervisor of a facility must conduct yearly performance evaluations for employees. The Facility failed to comply with this requirement for 14 of 53 reviewed employees.
 - 3) in violation of 481 IAC 58.10(3) the Facility failed to ensure all newly hired employees had physical examinations prior to employment and every four years thereafter.
 - 4) the Facility failed to ensure all newly hired staff received mandatory dependent adult abuse training within six months of employment, as required under Iowa Code section 235B.16(5)(b) & (c).
- f. In violation of 42 CFR 483.75(e)(5) (7), the Facility did not receive registry verification to show individual employees met competency evaluation requirements: before allowing an individual to serve as a nurses aid, a facility must receive registry verification that the individual has met competency

evaluation requirements (unless certain exceptions apply). The facility hired new employees and allowed them to work prior to receiving registry verification.

- g. In violation of 42 CFR 483.75(e)(8), the Facility did not provide at least 12 hours per year of regular in-service training for nurse aides.
- h. In violation of 42 CFR 483.75(o)(1), the Facility did not maintain a quality assessment and assurance committee that met on a quarterly basis.
- 5. Respondent was terminated from employment at the Facility in April, 2008.
 - 6. The Facility has appealed the above-listed violations.

E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 645 IAC chapter 12. If you are interested in pursuing settlement of this matter, please contact September Lau, Assistant Attorney General, at (515) 281-7175.

F. PROBABLE CAUSE FINDING

On this 14th day of July, 2011, the Iowa Board of Nursing Home Administrators found probable cause to file this Notice of Hearing and Statement of Charges.